

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>AMEREN ILLINOIS COMPANY</b>	)	
<b>d/b/a Ameren Illinois</b>	)	
	)	<b>Docket No. 14-0317</b>
<b>Rate MAP-P Modernization Action Plan -</b>	)	
<b>Pricing Annual Update Filing</b>	)	

**RESPONSE OF THE CITIZENS UTILITY BOARD  
AND THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS  
TO THE PEOPLE OF THE STATE OF ILLINOIS' CORRECTED MOTION FOR  
PARTIAL COLLECTION OF REVENUES SUBJECT TO REFUND**

Now come the Citizens Utility Board ("CUB") and the Illinois Industrial Energy Consumers ("IIEC") (collectively "CI"), pursuant to the Rules of Practice of the Illinois Commerce Commission ("ICC" or "the Commission"), 83 Ill. Admin. Code Part 200.190, to hereby file this response to the Motion of the People of the State of Illinois' Motion for Partial Collection of Revenues Subject to Refund ("Motion"). For the following reasons, and those stated in the Motion, the Motion should be granted.

CI agree with the People of the State of Illinois, Illinois Attorney General ("AG") that the facts and law presented in the Motion compel the Commission to order that the portion of revenues collected by Ameren Illinois Company ("Ameren," the "Company" or "AIC") that include interest on the full reconciliation balance should be collected subject to later refund pending resolution of this issue on appeal. The Commission rejected CI's and the AG's proposal to net the reconciliation balance on which interest is calculated of accumulated deferred income taxes ("ADIT"), despite twice finding that such proposal has merit. Docket No. 14-0317, Order at 76-77 (December 10, 2014); Docket No. 13-0553, Final Order at 43 (November 26, 2013). The Order in the instant proceeding acknowledges that the intervenors' approach conforms to

GAAP, could capture deferred tax benefits, and is likely a more accurate accounting for all of the economic impacts caused by the revenue requirement reconciliation. Order at 67. The Commission nonetheless rejects intervenor's approach and discounts the guidance offered in a recent appellate court decision which addresses a virtually identical issue, and specifically authorized the Commission to assert its interpretation of the relevant sections of the Public Utilities Act to deduct ADIT in accordance with regulatory principles. Order at 67; Motion at 4; CI App. for Reh'g at 3-5, *citing, Ameren Illinois Co. v. Illinois Commerce Comm'n, et al.*, 2013 Ill.App. 4<sup>th</sup> 121008.

Instead of analyzing the legal and factual boundaries of the issue, the Commission essentially defers analyzing the issue because it is currently on appeal and the appellate court decision will "provide needed clarity on this issue." Order at 67-68. The Commission's decision to again reject an adjustment it finds meritorious ignores guidance offered in a recent appellate court decision, which addresses a virtually identical issue, and specifically authorized the Commission to assert its interpretation of the relevant sections of the Public Utilities Act to deduct ADIT in accordance with regulatory principles. Motion at 4; CI App. for Reh'g at 3-5, *citing, Ameren Illinois Co. v. Illinois Commerce Comm'n, et al.*, 2013 Ill.App. 4<sup>th</sup> 121008.

The Commission should not allow its reluctance to adopt an adjustment that has merit, based in part on the fact that the issue is currently on appeal, to preclude ratepayers from receiving refunds for payment of unjust and unreasonable rates that are unlawfully paid precisely because of the timing of that appeal. The AG is correct that no harm can come to the Company if the requested relief is granted, because the only funds subject to refund are those that would be found to be illegally charged. Motion at 9-10. There is no statutory deadline for the appellate court to decide this matter, and no way of determining when a decision will be rendered. Even if

the appellate court issues an order sometime this year, the case will be remanded to the Commission after the mandate of the court is ordered to set new rates, which would take additional time. The harm to rate payers, therefore, would be irreparable because, in all likelihood, refunds for revenues collected in 2015 will not be ordered until much later in the year, thereby resulting in either a substantially smaller refund than is due them, or possibly no refund at all. This result is untenable and avoidable.

CUB joined the AG in appealing the Commission's decision on this same issue in the 2013 formula rate update for Commonwealth Edison Company, Docket No. 13-0553, and thus stands in the same position as the AG on this issue. CI additionally incorporates by reference the reasons set forth in the CI Initial Brief, Reply Brief, and Brief on Exceptions (at 8-21, 6-16, and 4-9, respectively). Those arguments demonstrate the likelihood of prevailing on the merits of the appeal, the irreparable harm ratepayers will suffer absent the requested relief, and the lack of harm to the only other affected entity, the utility. *See City of Chicago v. People of Cook County*, 133 Ill.App.3d 435, 449-50 ("In deciding whether or not to grant a stay of a Commission order, we believe a reviewing court's discretion should be guided by traditional factors for granting interlocutory injunctive relief. They are: (1) the petitioner's likelihood of prevailing on the merits; (2) the irreparable harm petitioner will suffer if the stay is not granted; and (3) the harm to other parties which would result from the issuance of the stay." citing *Kable Printing Co. v. Mount Morris Bookbinders Union Local 65-B*, 63 Ill.2d 514, 523, (1976)). Thus, the required elements of granting the requested relief have been satisfied under Illinois law.

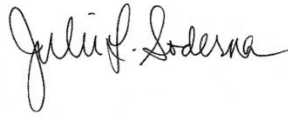
### III. CONCLUSION

WHEREFORE, CI respectfully request that the Commission grant the Motion and order that the portion of revenues collected that include interest on the full reconciliation balance, without netting ADIT, should be subject to refund pending judicial resolution of this matter.

Dated: January 14, 2015

Respectfully Submitted,

THE CITIZENS UTILITY BOARD



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ILLINOIS INDUSTRIAL ENERGY CONSUMERS



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